BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of MOLOKAI PUBLIC UTILITIES, INC. For review and approval of rate increases; revised rate schedules; and revised rules.	)	Docket No. 2009-0048

MOLOKAI PUBLIC UTILITIES, INC.'S RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S INFORMATION REQUESTS

AND

CERTIFICATE OF SERVICE

MORIHARA LAU & FONG LLP

MICHAEL H. LAU, ESQ.
YVONNE Y. IZU, ESQ.
SANDRA L. WILHIDE, ESQ.
Davies Pacific Center
841 Bishop Street
Suite 400
Honolulu, Hawaii 96813
Telephone: (808) 526-2888

Attorneys for MOLOKAI PUBLIC UTILITIES, INC.

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COMES NOW, MOLOKAI PUBLIC UTILITIES, INC. ("MPUI"), by and through its undersigned counsel, Morihara Lau & Fong LLP, hereby submits its Responses to the Public Utilities Commission's Information Requests.

DATED: Honolulu, Hawaii, October 29, 2009.

Respectfully submitted,

MICHAEL H. LAU, ESQ.
YVONNE Y. IZU, ESQ.
SANDRA L. WILHIDE, ESQ.
Morihara Lau & Fong LLP

Attorneys for
MOLOKAI PUBLIC UTILITIES, INC.

MOLOKAI PUBLIC UTILITIES, INC.'S RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S SUBMISSION OF INFORMATION REQUESTS

DOCKET NO. 2009-0048

PUC-IR-103 At the public hearing, MPU was unable to sufficiently respond to the Commission's queries concerning the status of Well 17 and the Molokai Irrigation System ("MIS").[1] Yet MPU, as part of its Amended Application, seeks the Commission's approval: (1) of certain Well 17 and MIS-related expenses for the test year;[2] (2) to establish a Purchased Fuel Adjustment Clause ("PFAC") that will authorize the water utility to pass onto its ratepayers changes in the fuel expenses it incurs to pump water from Well 17;[3] and (3) to defer and recover in future rate cases the litigation costs it will incur related to Well 17 and the MIS.[4]

In particular, with respect to Item No. 3, above, MPU, in its written testimony, states:

> Q. Does the Company expect to incur legal and other Professional Services expenses regarding current

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[1]Transcript of the public hearing held on September, 3, 2009, in Kaunakakai, Molokai, at 6-9 (commission's questions about Well 17 and the MIS). MPU's representative who testified at the public hearing deferred MPU's responses to the Commission's questions to Mr. Peter Nicholas, who was not present at the public hearing. Mr. Nicholas is listed by MPU in its initial and amended applications as a contact person for MPU, in the care of Molokai Properties, Limited.

[2]See, e.g., Amended Application, Exhibits 6 and 10.3 (State of Hawaii ("State"), Department of Agriculture ("DOA") – rental service expense for the Test Year, $144,456); and Exhibit 10.2 (Well 17, fuel expense for the Test Year, $282,524). According to MPU, the DOA – rental service expense reflects "the annual cost for the services provided to MPU by the Department of Agriculture related to the transportation of water from Well 17 to [MPU's] Mahana pump station." Amended Application, Exhibit MPU-T-100, at 29.

[3]See Amended Application, at 12; see also id. at Exhibit MPU-T-100, at 26-28 (PFAC).

[4]See Amended Application, Exhibit MPU-T-100, at 30-32.

PUC-IR-103 (cont.)

litigation and also for potential proceedings associated with the production and transmission of water supplies?

A. Yes, it does.

Q. Please briefly describe those activities or proceedings.

A. The Company is currently involved in a proceeding before the Commission brought by the County of Maui in Docket No. 2008-0116. In addition, the Company could become involved in a permitting proceeding involving a water use permit for Well 17 for withdrawing water from the Water Management Area, as well as Department of Agriculture permitting related to the completion of a transportation agreement through the MIS, which moves the water produced at Well 17 to the Mahana pump station to be delivered to the Company's customers.

Q. Has the Company actually begun expending funds related to these permitting activities and other litigation?

A. Yes, the Company has been making expenditures regarding the County of Maui litigation.

Q. Does MPU have any estimate of the total costs for these activities?

A. Yes. The Company believes that its expenditures on these proceedings will escalate through and after the TY and is seeking to obtain Commission authorization to defer these expenses for recovery in future rate cases.

Q. What is the total estimated expense for those activities and what is the current estimate of the total litigation time?

A. The total expense estimate for all three cases ranges from approximately $645,000 to $970,000 with an

PUC-IR-103 (cont.)

estimate of 1 to 4 years for completion of these cases, assuming there is no appeal or other related *proceeding*.

Q. Please describe the procedure the Company is recommending in this proceeding.

A. The Company is requesting that the Commission authorize the Company to defer these expenses as they are incurred, and permit the Company to seek recovery of the deferred expenses in a subsequent rate case.

Amended Application, Exhibit MPU-T-100, at 30-32.

A. Fully and clearly explain: (1) the status of MPU or its affiliates' efforts in securing a water use permit from the State Commission on Water Resource Management ("CWRM") for Well 17, with estimated target dates; and (2) the target date for securing a water use permit from the CWRM, including MPU's estimate as to whether MPU or its affiliates will secure the water use permit within the test year period.

RESPONSE: (1) See Attachment PUC-IR-103 A.(1) for a discussion of the background to, challenges involved in, and current status of, efforts in securing a water use permit from CWRM for Well 17.

(2) A water use permit for Well 17 will not be secured within the test year period. As indicated in Attachment

PUC-IR-103 (cont.)

PUC-IR-103 A.(1), securing a water use permit for Well 17 will be expensive and time consuming. Because of the expense, it is MPU's desire to become profitable before re-opening the Well 17 proceedings before CWRM. If we assume that a rate increase will be approved by the Commission at around the end of the second quarter of 2010, MPU anticipates re-opening CWRM proceedings in the late third quarter or early fourth quarter of 2010. Based on past experience, the permitting process, which is anticipated to include a contested case before the CWRM and an appeal to the courts, will likely take three to seven years to resolve. (*E.g.*, Molokai Ranch, Limited filed an application on January 25, 1996 for a water use permit to withdraw water from a yet-to-be-constructed well in central Molokai; CWRM rendered its decision in the contested case proceeding on December 28, 1998, which was appealed to the Hawaii Supreme Court; the Court issued its opinion remanding the case on January 29, 2004. The Well 17 water use permit application filed by Kukui (Molokai), Inc. was accepted by CWRM on December 15, 1993; CWRM rendered its decision eight years later on

PUC-IR-103 (cont.)

December 19, 2001; an appeal to the Hawaii Supreme Court, which resulted in remand, took another six years.)

B. In the event that MPU or its affiliates do not obtain a water use permit from the CWRM for Well 17 during the test year period, fully and clearly explain MPU's basis for nonetheless seeking in this rate case proceeding the Commission's approval: (1) to include as reasonable the operational costs associated with Well 17 in the test year; and (2) of a PCAF.

RESPONSE: (1) There are several facts that support the recovery of the operational costs associated with Well 17. First, the Company has no indication that the use of Well 17 to provide water to MPU to provide service to its customers will not be available to MPU to provide such service throughout the test year and even for the period following the end of the test year. Second, the water produced from Well 17 has been, is, and will continue to be essential to providing water service to MPU's customers. Third, no matter what entity provides the utility service to MPU's customers, which is currently provided by MPU, the water produced from Well 17 is required to provide utility service. Finally, the operational costs associated with Well 17 are reasonable. The

PUC-IR-103 (cont.)

Company believes that, because there is no other viable alternative source of water to provide service to MPU's customers that could replace Well 17 during the test year or for any reasonable period after the end of the test year, public health and safety requirements would provide that Well 17 continue to be used.

(2) Since the operational costs of Well 17 are required to provide water utility service to MPU's customers and those costs are significant, volatile and beyond the Company's control, it is appropriate to establish a PCAF to pass through to customers the changes in fuel costs for Well 17 from the level included in base rates. As shown on Exhibit MPU 10.2, column 7, line 5, MPU's fuel expense for the test year is $282,524 which is approximately 25 percent of the Company's total operating expenses for the test year before depreciation and taxes-other than income as shown on Exhibit MPU 10 column 6, line 26 minus lines 23 and 22. ($282,524 / [$1,244,926 - $92479 - $28,084 = $1,124,363] = 25.13%). The volatility of the price of fuel is shown on Workpaper MPU 10.2 in column 4 where the cost of fuel per gallon ranged from a low of $2.762 for February 13, 2007 on

PUC-IR-103 (cont.)

line 19 to a high of $4.918 for July 17, 2008 on line 67. That price has since declined as reflected on MPU's response to CA-IR-36a, Part B where the price of fuel for August 4, 2009 on line 87 is $2.550. This volatility is confirmed by the change in the cost of fuel for the year from July 17, 2008 (line 67) of $4.918 down to $2.170 for March 17, 2009 (line 78) up to $2.734 (line 86). Finally, the Company does not have any control over the charges for the fuel provided to run the pumps at Well 17. These facts support the request for the inclusion of a PCAF for MPU.

C. Fully and clearly explain: (1) the status of MPU or its affiliates' efforts in securing a formal agreement or permit from the State DOA for the MIS, with estimated target dates that include the completion of the environmental review process; and (2) the target date for securing a formal agreement or permit from the DOA, including MPU's estimate as to whether MPU or its affiliates will secure the formal agreement or permit within the test year period.

RESPONSE

(1) See Attachment PUC-IR-103 C.(1) for a discussion of the background to, challenges involved in, and current status of, efforts in securing a long-term agreement with the DOA

PUC-IR-103 (cont.)

for continued use of the MIS, including an estimated timetable for completion of the environmental review process.

(2) It is unlikely that MPU will secure a long-term agreement with DOA for continued use of the MIS within the test year period. As indicated in Attachment PUC-IR-103 C.(1), an agreement for the continued use of the MIS was negotiated and ready to be executed in September 2007, when it was derailed due to the environmental disclosure issue. Although it is probable that negotiating a new agreement can be accomplished within a relatively short period of time, the environmental review process, which must precede negotiations, may take from ten months to three years.

D. In the event that MPU or its affiliates do not obtain a formal agreement or permit from the DOA for the MIS during the test year period, fully and clearly explain MPU's basis for nonetheless seeking in this rate case proceeding the Commission's approval to include as reasonable the DOA rental expenses associated with the MIS in the test year.

PUC-IR-103 (cont.)

RESPONSE: As shown in response to PUC-IR-103 C.(1) (Part A), MPU has an existing agreement with MIS for month-to-month use of the MIS facilities to transport water produced from Well 17 to MPU's pumping station at Mahana. The Company has no indication that this month-to-month agreement will be revoked or modified during or following the end of the test year. Moreover, constructing a transportation system that would by-pass the MIS facility could not be constructed prior to the end of the test year. In addition to the substantial capital expenditure it would require, such a bypass facility would have to traverse lands owned by the Department of Hawaiian Home Lands, which in the past, has refused to grant consent for the necessary easements. As there is no other method to transport the water produced by Well 17 to provide water utility service to MPU's customers, discontinuation of the transportation service through MIS facilities would create health and safety issues for MPU's customers. The Company believes that the continued use of the MIS facilities through and after the test year is and will continue to be permitted and that the costs are reasonable

PUC-IR-103 (cont.)

and should be included in the recovered expense for the test year.

SPONSOR: **Robert O'Brien/Peter Nicholas**

ATTACHMENT
PUC-IR-103 A.(1)

Under the Hawaii State Water Code, Hawaii Revised Statutes (HRS) Chapter 174C, when an area is designated as a water management area, any withdrawals of water from the area requires a water use permit issued by the State Commission on Water Resource Management (CWRM). See HRS § 174C-48.

The entire island of Molokai is a designated ground water management area. Consequently, a water use permit is required to pump water from Well 17. Currently, however, Molokai Public Utilities Inc. (MPU) does not have such a permit, and in continuing to pump, is technically violating the Water Code.

Background

The entire island of Molokai was designated as a ground water management area in 1992. Under the Water Code, upon designation, those who had been using ground water prior and up to the date of designation have one year in which to file applications for existing use permits. Existing use applications have priority over applications for new uses, and existing uses have to meet fewer criteria for issuance of a permit than new use applications. See HRS § 174C-50. Filing an application after the one-year deadline puts the user in the "new use" category, even though, in actuality, water was being used prior to the date of designation.

In 1992, Well 17 and MPU were owned and operated by Kukui (Molokai), Inc. (KMI). KMI filed an application for an existing use permit with CWRM. Pursuant to petitions by the Office of Hawaiian Affairs (OHA), the Department of Hawaiian Home Lands (DHHL), and some Molokai Hawaiian homesteaders represented by the Native Hawaiian Legal Corporation (NHLC) (collectively, "Opponents"), a contested case was held on KMI's application. Following the contested case, on December 19, 2001, CWRM issued its decision, authorizing MPU to pump 1.018 mgd (on a 12-month moving average) from Well 17. Opponents appealed CWRM's decision to the Hawaii Supreme Court in January 2002.

Just before CWRM rendered its decision at the end of 2001 (after the evidentiary phase of the case was closed), Molokai Properties Limited (MPL) purchased the Kaluakoi Resort, golf course, certain nearby lands, Well 17 and MPU from KMI. Thus, MPL defended the case on appeal, but for the most part was not involved in the contested case proceedings before CWRM.

On December 26, 2007, nearly 6 years after CWRM's decision, the Hawaii Supreme Court issued its ruling. Although the Court affirmed CWRM's decision on some issues, it held that CWRM erred on several of the issues and, therefore, vacated the permit and remanded the case back to CWRM for further proceedings.

Shortly after the Supreme Court's ruling was published, MPL, on January 2, 2008, filed a motion to be allowed to continue pumping from Well 17 pending the outcome of the remand proceedings. A status conference was called by the CWRM chair on March 3, 2008, which involved all of the parties to the original contested case as well as CWRM staff. The status conference focused on determining the scope and scheduling of the Motion to Continue Water Withdrawals and the Well 17 remand proceedings.

On May 27, 2008, however, MPL notified CWRM that it did not intend to pursue the case on remand because of the significant costs involved and MPL's intent to seek a new owner for MPU. The Motion to Continue Water Withdrawals was never heard or decided, and no proceedings have since occurred.

Proceedings on Remand

A. "New Use" Application

The Hawaii Supreme Court ruled that CWRM was wrong in treating any part of KMI's application as an application for an existing use permit. Apparently, a timely existing use application had been filed in 1993, but withdrawn, and a replacement application was filed after the one-year time period had lapsed. Because of the untimely filing of KMI's application, the Court indicated that CWRM should have treated it as an application for "new uses." By failing to process the application for new uses, CWRM did not address all of the criteria that a new use application must meet. Additionally, the Court noted that because KMI's application should have been treated as a new use, it should not have been given priority over other new use applications, namely, an application from DHHL to increase its allocation for its well in the same aquifer as Well 17.

Because the application was processed as an existing use application, rather than a new use application, the existing record in the case probably does not have sufficient evidence to meet most of the criteria for a new use permit. That, in turn, means that remand proceedings may not be much different from proceedings on an original application.

There is also the question of whether another replacement application would have to be filed, or whether the facts have changed so significantly as to require a new application, which means that the application process would have to begin anew. That would mean, among other things, that a new notice would have to be published, there would be a notice period for public comment and objection, probably a public hearing on the application, and new parties could intervene in the case.

Because of the need to address all the criteria for a new use permit, and because much of the application information has changed (e.g., amount of water being requested and the uses), a revised application will have to be filed. Second, the

Opponents may argue that the relevant evidence on record is dated (the evidentiary portion of the case was presented more than 10 years ago) and new updated evidence is required. In other words, except for being able to skip some procedural steps that normally precede a contested case, we may expect the remand proceeding to closely resemble an original contested case, rather than remand proceedings.

B. Criteria for Water Use Permit

To obtain a water use permit for "new uses," pursuant to HRS § 174C-49, an applicant must demonstrate:

(1) That the use can be accommodated with the available water source.

(2) That the use is "reasonable-beneficial," which means that the use is economic and efficient, consistent with State and county land use plans, and consistent with the public interest. Part of the "reasonable-beneficial" analysis now requires an "alternative source" analysis.

State and County Land Use Plans. Generally speaking, the evidence needs to show that the uses match up with county zoning.

Alternative Water Sources. This requires a demonstration that Well 17 is the most practicable alternative for water. Separate analyses would probably be required for potable and for non-potable water.

(3) That the use does not interfere with existing legal uses. The primary issue here will be to show that pumping Well 17 at the proposed amount has not created the increase in chloride levels experienced in the DHHL and DWS wells.

(4) That the use is consistent with the public interest. Using water for existing domestic uses is clearly in the public interest and an identified public trust use. Using water for irrigation of large lots that are not real farms, however, may be controversial.

(5) and (6) That the use is consistent with State and county general plans and land use designation and state and county land use plans and policies. The Water Commission basically asks whether the applicant has the proper zoning for the uses proposed.

(7) That the use does not interfere with the rights of DHHL. This is where we would have to address the issue of interference with DHHL's reservation of 2.905 mgd of water from the Kualapuu aquifer. This criterion did not have to be addressed on an existing use permit application. However, by

treating the Well 17 application as a new use permit on remand, we will have to contend with this issue.

Native Hawaiian Gathering Rights. In addition to the seven enumerated criteria in HRS § 174C-49 above, native Hawaiian gathering rights must be addressed in order to obtain a water use permit. The primary issue related to the same is whether pumping at the levels requested would adversely impact nearshore resources traditionally gathered by native Hawaiians.

ATTACHMENT
PUC-IR-103 C.(1)

Water from Well 17 is transported to the west end of Molokai (West End) first through the Molokai Irrigation System (MIS) to the Mahana pump station. From Mahana, water is pumped to Pu`u Nana for treatment. The treated water is piped to a reservoir in Maunaloa, and from there gravity fed to Kaluakoi. A map which generally shows the routing of the water from Well 17, through the MIS and to the treatment plant at Pu`u Nana is provided as Attachment PUC-IR-103 C(1) (Part B).

Molokai Public Utilities, Inc. (MPU) does not use any water developed by the MIS. Instead, MPU "rents space" in the MIS to transport water to Mahana. The water pumped from Well 17 is of potable quality. However, once in the MIS, it is mixed with non-potable water that does not meet Safe Drinking Water standards. Thus, the water has to be treated at Pu`u Nana before it can be distributed to end users at Kaluakoi.

The MIS was planned, designed, and constructed under a special Act of Congress (Reclamation Act of 1954) to develop surface water and high-level ground water in Waikolu Valley in northeastern Molokai to irrigate farmlands in the central and western parts of the island. The MIS originally served large-scale pineapple operations, but was converted to serve diversified agriculture after the pineapple plantations closed in the 1970s. The system also serves the native Hawaiian homesteads in Hoolehua and, pursuant to HRS § 168-4, Hawaiian homesteads have a prior right to two-thirds of the water currently developed by the MIS. The MIS transports 1.5 mgd via a 10-mile transmission link to an open reservoir at Kualapuu, where it is stored prior to entering a distribution network extending from Hoolehua to Mahana.

When originally constructed, the MIS was administered by the Board of Land and Natural Resources (BLNR). In 1975, the BLNR entered into an agreement with Kaluakoi Corporation (Kaluakoi), renting "space" in the MIS for Kaluakoi to transport water from Well 17 to Mahana. Under the terms of the agreement, Kaluakoi would pump water from Well 17 into the MIS and withdraw the water at Mahana. To account for potential system losses along the way, Kaluakoi was required to withdraw a lesser amount at Mahana than was put in from Well 17. Additionally, Kaluakoi paid lease rent to the MIS. The agreement was for the use of "excess capacity" in the system and provided that if there was no longer sufficient capacity in the system, then the use would have to be relinquished on reasonable notice.

The 1975 agreement was extended by the BLNR in 1985. In 1988, Kaluakoi assigned its interest in the agreement to Kukui (Molokai), Inc. (KMI). As a result of the agreement, no other infrastructure to transport Well 17 water to the West End was put into place.

Effective July 1, 1989, administration and management of the MIS was transferred from the BLNR to the State Department of Agriculture (DOA). In December 1989, the agreement was amended to reflect the statutory transfer to DOA.

Subsequently, the Agreement was extended twice through December 31, 2005. In late 2001, KMI assigned the agreement to Kaluakoi Water, LLC (KWLLC), a Hawaii limited liability company wholly-owned by Molokai Properties Limited (MPL). DOA acknowledged this assignment in early 2002.

Prior to and following the Agreement termination date of December 31, 2005, KWLLC and the DOA have been engaged in negotiations for the continued use of the MIS to transport Well 17 water to Mahana, and the DOA conducted community meetings on this matter. By September 2007, the parties had agreed to the terms of the agreement and a further extension of the term of the Agreement was in the final stages of being completed following community input on aspects of the Agreement (the "Extension Agreement").

The proposed Extension Agreement, among other things, would have permitted KWLLC to transmit water through the MIS system until June 30, 2011 at an equivalent price of 70 cents per 1,000 gallons transmitted. This compares to the 30 cents per 1,000 gallons paid for by homesteaders and commercial agricultural water users of the system.

The proposed Extension Agreement had not been executed when, on September 12, 2007, the DOA, through its Deputy Attorney General (at the behest of Native Hawaiian Legal Corporation), determined that any agreement for the continued use of the MIS by KWLLC would be subject to the preparation of an environmental disclosure document pursuant to HRS Chapter 343. The Deputy Attorney General also indicated in writing that KWLLC's use of the MIS should cease pending preparation of the environmental disclosure document.

Notwithstanding the Deputy Attorney General's statement, KWLLC has continued to transport water through the MIS, even though no environmental disclosure document has been prepared, nor, has DOA initiated, or asked MPU to initiate, the environmental disclosure process. By letter dated April 9, 2008, the DOA confirmed the current cost to MPU of continued use of the MIS to transport Well 17 water, which, as MPU understands, constitutes a holdover of the agreement that expired at the end of 2005. MPU continues to pay $11,375 per month for continued use of the MIS and stands ready to enter into a more secure agreement with DOA for use of the MIS. See Attachment PUC-IR-103 C.(1) (Part A).

Estimated cost of preparing environmental disclosure document(s) range from $25,000 for a relatively simple environmental assessment to $250,000 for a full environmental impact statement. Because of the expense involved, it is MPU's

desire to become profitable before embarking on the environmental review process. If we assume that a rate increase will be approved by the Commission at around the end of the second quarter of 2010, MPU will work with the DOA to initiate the process in the late third quarter or early fourth quarter of 2010. It must be noted, however, that the environmental review process, including its initiation, lies largely in the hands of the DOA, over which MPU has no control.

MPU estimates that the environmental review process will take anywhere from 10 months for an environmental assessment to three years if an environmental impact statement is required.

ATTACHMENT
PUC-IR-103 C.(1) (Part A)

ATTACHMENT PUC-IR-103 C.(1) (Part A)

LINDA LINGLE
Governor

SANDRA LEE KUNIMOT
Chairperson, Board of Agricu

DUANE K. OKAMOTO
Deputy to the Chairperso

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

April 9, 2008

Mr. Peter Nicholas
President & Chief Executive Officer
Molokai Properties Limited
745 Fort Street, Suite 600
Honolulu, HI 96813

Mr. Daniel Orodenker
General Manager Land-General Counsel
Molokai Properties Limited
745 Fort Street, Suite 600
Honolulu, HI 96813

Dear Messrs. Nicholas and Orodenker:

Re: Interim Use of the MIS Transmission Pipeline

In light of your recent shut down of operations, the Hawaii Department of Agriculture (HDOA) will allow Molokai Properties Limited (MPL) to continue use of the Molokai Irrigation System (MIS) transmission pipeline on a month-to-month basis under the terms and conditions in effect as of April 30, 2006. Those terms and conditions include payment of an annual rent of $136,500, not $135,000, as erroneously stated in your letter of April 1, 2008. We will review the situation again prior to June 30, 2008.

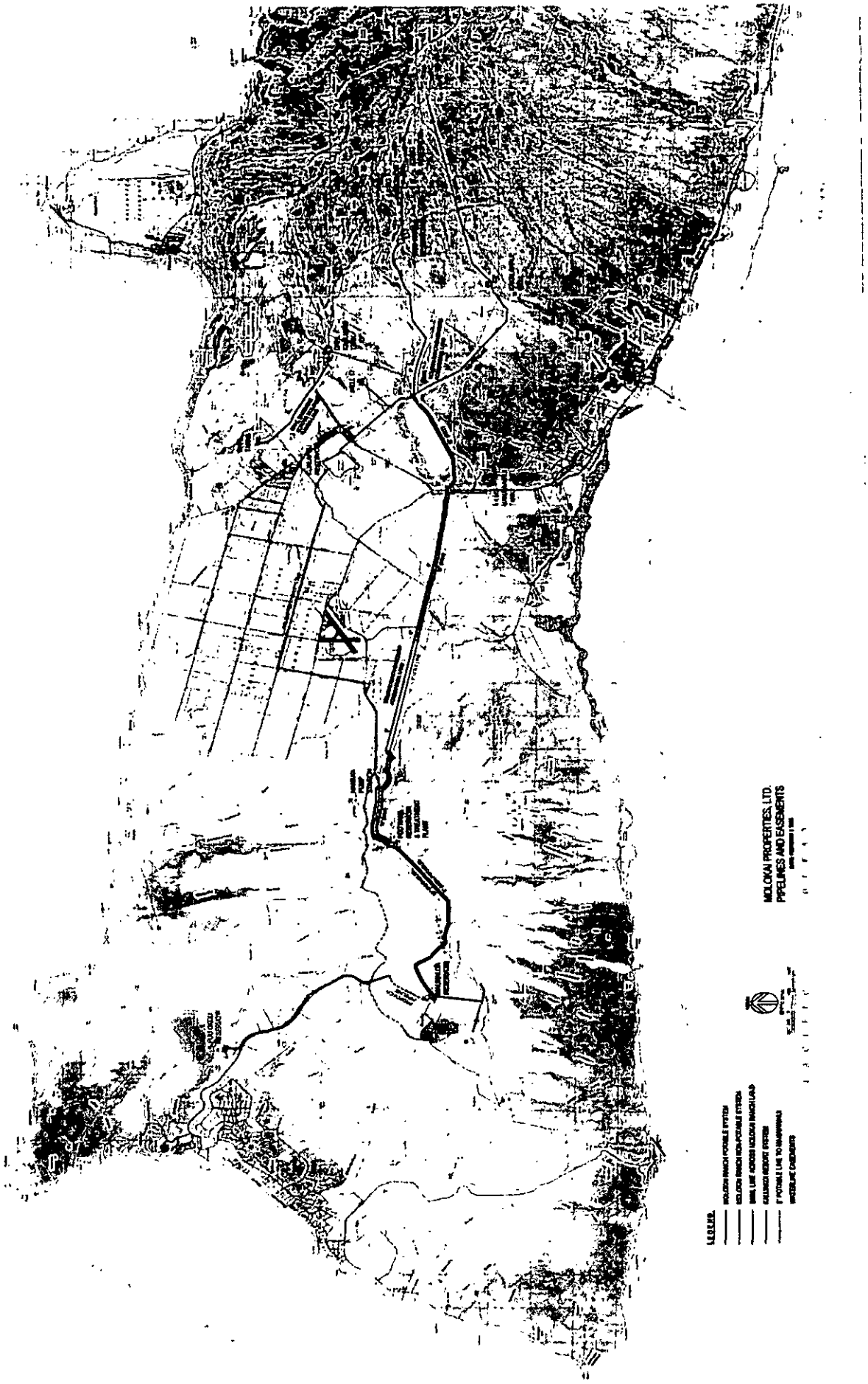
We understand that you are exploring options for transferring the responsibility for your water systems. An environmental review, consisting of an environmental assessment and, if necessary, an environmental impact statement, is required before HDOA can enter into any new agreement for the rental of the excess space within the MIS transmission pipeline. It will be the responsibility of MPL or its successor to accomplish and bear the cost for the environmental review. This requirement should be made known to any potential successor.

We would also appreciate knowing your plans regarding your Well 17 and Mountain Water System connections to the MIS.

Sincerely,

Sandra Lee Kunimoto, Chairperson
Board of Agriculture

ATTACHMENT
PUC-IR-103 C.(1) (Part B)


MOLOKAI PROPERTIES, LTD.
PIPELINES AND EASEMENTS

MOLOKAI PUBLIC UTILITIES, INC.'S RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S SUBMISSION OF INFORMATION REQUESTS

DOCKET NO. 2009-0048

PUC-IR-104 A. Identify the owner of Well 17.

RESPONSE: Kaluakoi Water, LLC.

B. Identify the owner of the MIS.

RESPONSE: State of Hawaii Department of Agriculture.

SPONSOR: **Robert O'Brien/Peter Nicholas**

MOLOKAI PUBLIC UTILITIES, INC.'S RESPONSES TO THE PUBLIC UTILITIES COMMISSION'S SUBMISSION OF INFORMATION REQUESTS

DOCKET NO. 2009-0048

PUC-IR-105 MPU, on page 16 of its Opposition to the County of Maui's Motion to Intervene, refers to a State Department of Health ("DOH") proceeding "which is not applicable or relevant to the instant proceeding."

Fully and clearly explain the current status of the DOH proceeding.

RESPONSE: Following an announcement made in March 2008 by Molokai Properties Limited ("MPL") that it would no longer monetarily subsidize MPU, Wai`ola O Molokai ("WOM") and Mosco, Inc., the Director of Health, on July 21, 2008 served an order on MPU, WOM and MPL in Docket No. 08-SDW-EO-01 requiring MPU, WOM and MPL, for the next 90 days to continue to operate the public water systems. A hearing on the matter was held on July 30, 2008. Finding and concluding that cessation of drinking water services is an imminent peril to the public health and safety, the Hearing Officer affirmed the Director of Health's July 21, 2008 Order. **With regard to MPU, the Director of Health's Order is moot inasmuch as the 90-days of its effectiveness has expired.**

In rendering the decision affirming the Director of Health's Order, the Hearing Officer also determined that MPL is the alter ego of MPU, WOM and Mosco, notwithstanding the intermediate holding

PUC-IR-105 (cont.)

companies. MPL appealed the Hearing Officer's decision to the First Circuit Court sitting in an appellate capacity. On August 6, 2009, the First Circuit Court affirmed the Department of Health's Order. MPL has taken a secondary appeal from the Circuit Court's Order. A Civil Appeal Docketing Statement was filed by MPL on September 11, 2009. By law, MPU is a designated appellee in the case. However, MPU does not intend to actively participate in briefings or hearings before the appellate court.

SPONSOR: **Robert O'Brien/Peter Nicholas**

CERTIFICATE OF SERVICE

I hereby certify that on this date, copies of the foregoing document were duly served on the following parties, by having said copies delivered as set forth below:

CATHERINE P. AWAKUNI EXECUTIVE DIRECTOR DIVISION OF CONSUMER ADVOCACY DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS 335 Merchant Street Room 326 Honolulu, Hawaii 96813	3 COPIES HAND DELIVER
Margery S. Bronster, Esq. Jeannette H. Castagnetti, Esq. Bronster Hoshibata 2300 Pauahi Tower 1003 Bishop Street Honolulu, HI 96813	1 COPY U.S. MAIL
William W. Milks, Esq. Law Offices of William W. Milks ASB Tower, Suite 977 1001 Bishop Street Honolulu, HI 96813	1 COPY U.S. MAIL
Andrew V. Beaman, Esq. Chun Kerr Dodd Beaman & Wong, LLLP Topa Financial Center Fort Street Tower 745 Fort Street, 9th Floor Honolulu, HI 96813	1 COPY U.S. MAIL

STAND FOR WATER
c/o Timothy Brunnert
P.O. Box 71
Maunaloa, Hawaii 96770

1 COPY
U.S. MAIL

DATED: Honolulu, Hawaii, October 29, 2009.

MICHAEL H. LAU, ESQ.
YVONNE Y. IZU, ESQ.
SANDRA L. WILHIDE, ESQ.
Morihara Lau & Fong LLP

Attorneys for
MOLOKAI PUBLIC UTILITIES, INC.